United Nations CRC/C/OPSC/DEU/CO/1

Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the report submitted by Germany under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

1. The Committee considered the initial report of Germany (CRC/C/OPSC/DEU/1) at its 1867th and 1868th meetings (see CRC/C/SR.1867 and CRC/C/SR.1868) held on 27 and 28 January 2014, and adopted, at its 1875th meeting, held on 31 January 2014, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/DEU/Q/1/Add.1). The Committee appreciates the constructive dialogue held with the high-level, multisectoral delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations on the State party's combined third and fourth periodic reports under the Convention on the Rights of the Child, adopted on 31 January 2014 (CRC/C/DEU/CO/3-4), and its concluding observations on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict, adopted on 1 February 2008 (CRC/C/OPAC/DEU/CO/1).

II. General observations

Positive aspects

4. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including:

(a) Act of 26 June 2013 strengthening the rights of victims of sexual abuse;

* Adopted by the Committee at its sixty-fifth session (13–31 January 2014).

(b) The amendment of the Code of Criminal Procedure to include possibilities for video recording witness testimony at every phase of proceedings, and using the recording to replace witness testimony at trial and/or the simultaneous audiovisual transmission of witness testimony.

5. The Committee notes with appreciation the State party's ratification of:

(a) Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in February 2013;

(b) Council of Europe Convention on Action against Trafficking in Human Beings, in December 2012.

6. The Committee welcomes the progress achieved in the creation of institutions and the adoption of national plans and programmes that facilitate the implementation of the Optional Protocol, including:

(a) The 2011 Action Plan of the Federal Government to Protect Children and Teenagers from Sexual Violence and Exploitation;

(b) The establishment in 2010 of the Independent Commissioner for Child Sex Abuse Issues;

(c) The joint educational campaign launched in 2010 in Germany, Austria and Switzerland to protect children from sexual exploitation in tourism.

III. Data

Data collection

7. The Committee regrets the lack of a national data collection system that covers all aspects of the sale of children, child prostitution and child pornography, including child sex tourism. The Committee also notes with concern the lack of comparative data at the federal level on offences under the Optional Protocol, and a lack of common indicators for all the Länder.

8. **The Committee urges the State party to develop and implement a comprehensive and systematic mechanism for data collection, analysis, monitoring and impact assessment that covers all the areas encompassed by the Optional Protocol. In that regard, the Committee recommends in particular that:**

(a) The data be disaggregated, inter alia, by sex, age, national and ethnic origin, geographical location and socioeconomic status, paying particular attention to the most vulnerable groups of children;

(b) Data be collected on prosecutions and convictions for the offences under the Optional Protocol, and disaggregated by the nature of the offence;

(c) The State party establish a system of common indicators when collecting data for the various Länder;

(d) The State party undertake qualitative and quantitative studies and analysis of the root causes and prevalence of all the offences under the Optional Protocol, and on the impact of the policies implemented and services provided for addressing them.

IV. General measures of implementation

Legislation

9. While welcoming the State party's efforts to integrate the various provisions of the Optional Protocol into its legislation, the Committee is concerned that it has focused almost exclusively on trafficking, child prostitution and child pornography. The Committee is also concerned that the existing legislation does not address all offences covered under the Optional Protocol, particularly the sale of children, a concept which is similar but not identical to trafficking in persons.

10. **The Committee recommends that the State party take all the necessary legislative measures to ensure the full incorporation of the provisions of the Optional Protocol into its domestic legal system.**

National plan of action

11. While welcoming the State party's national plan of action to protect children and adolescents from sexual violence and abuse, the Committee regrets the absence of a comprehensive strategy or national plan of action addressing all the issues covered under the Optional Protocol.

12. **The Committee recommends that the State party adopt a comprehensive strategy or national plan of action targeting all the issues covered under the Optional Protocol and provide adequate human, technical and financial resources for its implementation. The Committee also encourages the State party to ensure that the strategy or plan is regularly assessed and evaluated. Particular focus should be placed on prevention and on the protection, physical and psychological recovery and social reintegration of child victims.**

Coordination and evaluation

13. The Committee is aware of the federal nature of the State party and the autonomy granted to the Länder. However, it notes with concern that the State party does not have a central body for the overall coordination, monitoring, evaluation and implementation of the Optional Protocol at the federal, Länder and community levels.

14. **With reference to the recommendation in its concluding observations on the combined third and fourth periodic reports of the State party on the implementation of the Convention (CRC/C/DEU/CO/3-4, para. 14), the Committee recommends that the State party designate an adequate and permanent federal body with full mandate, capacity and authority and sufficient human, technical and financial resources to coordinate the implementation of the Optional Protocol effectively.**

Dissemination and awareness-raising

15. While welcoming several nationwide initiatives and campaigns aimed at raising awareness on the subject of sexual abuse, the Committee is concerned that awareness of the content of the Optional Protocol remains low among children, parents, legal guardians and professionals working with and for children.

16. **The Committee recommends that the State party take all the necessary measures to make the provisions of the Optional Protocol widely known among all professionals working with or for children, and among children, in particular those in vulnerable situations and their families and the public at large, including through appropriate media and through the development and implementation of long-term awareness-raising campaigns and educational programmes, including school curricula, on preventive measures and the harmful effects of all the offences under the Optional Protocol.**

Training

17. The Committee welcomes the information provided by the State party during the dialogue on its efforts to carry out training programmes on issues relating to the Optional Protocol. However, the Committee is concerned that the training activities are not sufficiently focused on all the provisions of the Optional Protocol and do not address in a proper way the relevant professionals working with and for children, particularly members of the judiciary.

18. **The Committee recommends that the State party strengthen training activities and allocate sufficient and adequate human, technical and financial resources for the development of systematic training programmes on all areas covered by the Optional Protocol for all professionals involved in its implementation, including judges, public prosecutors, police officers, social workers, health-care staff and other categories of professionals working with and for children.**

V. Prevention of the sale of children, child prostitution and child pornography (art. 9 (1) and (2) of the Optional Protocol)

Measures adopted to prevent offences prohibited under the Optional Protocol

19. The Committee regrets the State party's insufficient efforts to tackle the root causes which place children at risk of becoming victims of the offences under the Optional Protocol, such as child poverty and discrimination against children from minority groups and unaccompanied migrant and asylum-seeking children.

20. **The Committee recommends that the State party take all the necessary steps to tackle child poverty and discrimination against children who belong to vulnerable groups. In that regard, the Committee also encourages the State party to establish mechanisms to identify and monitor children who are at risk of becoming victims of the offences under the Optional Protocol and to provide them with psychosocial support and awareness-raising programmes.**

Child sex tourism

21. The Committee welcomes the measures taken by the State party to prevent child sex tourism, such as the joint educational campaign to protect children from sexual exploitation in tourism launched by the State party, Austria and Switzerland, and the development of a code of conduct. However, the Committee regrets the lack of information on the implementation of policies to prevent child sex tourism, in particular the code of conduct,

and on steps taken to ensure that the tourism industry protects children from becoming victims. The Committee also regrets the lack of data on prosecutions for child sex tourism in the State party.

22. **The Committee urges the State party:**

(a) To establish and implement an effective regulatory framework and take all the necessary legislative, administrative, social and other measures to prevent and eliminate child sex tourism;

(b) To strengthen its international cooperation through multilateral, regional and bilateral arrangements for the prevention and elimination of child sex tourism;

(c) To strengthen its advocacy with the tourism industry on the harmful effects of child sex tourism and widely disseminate the Global Code of Ethics for Tourism among travel agents and tourism agencies;

(d) To encourage travel enterprises to sign the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3, 4 (2) and (3), and 5 to 7 of the Optional Protocol)

Existing criminal laws and regulations

23. While welcoming the efforts of the State party to include in its Criminal Code the offences under the Optional Protocol, the Committee remains concerned that the criminal legislation does not reflect the definition of the sale of children provided in article 2 of the Optional Protocol, and that cases in which children are victims of sexual exploitation, transfer of organs for profit, engagement in forced labour and illegal adoption are not criminalized in the context of the sale of children, as required by article 3 of the Optional Protocol.

24. **The Committee recommends that the State party continue to revise its Criminal Code and other relevant legislation in order to bring them into full compliance with articles 2 and 3 of the Optional Protocol. In particular, the State party should define and criminalize the sale of children in accordance with the Optional Protocol, especially the sale of children for the purpose of sexual exploitation, transfer of organs for profit, engagement in forced labour and illegal adoption, in conformity with article 3, paragraphs 1 and 5, of the Optional Protocol.**

25. The Committee also notes with concern that some provisions of the Criminal Code punishing crimes under the Optional Protocol, particularly child pornography, protect children up to the age of 14 only.

26. **The Committee recommends that the State party ensure that all children under the age of 18 are fully protected.**

Impunity

27. The Committee is concerned at the lack of information on investigations, prosecutions and punishment of perpetrators of all offences under the Optional Protocol.

28. **The Committee urges the State party to take all the necessary measures to ensure that crimes under the Optional Protocol are investigated and that alleged perpetrators are prosecuted and duly sanctioned. The Committee recommends that the State party provide detailed information on investigations, prosecutions and punishment of perpetrators of offences under the Optional Protocol in its next periodic report.**

Extraterritorial jurisdiction and extradition

29. The Committee regrets that the State party's legislation does not explicitly allow extraterritorial jurisdiction for all the cases referred to in article 4, paragraph 2, of the Optional Protocol. The Committee also regrets that jurisdiction over the offences under the Optional Protocol necessitates double criminality.

30. **The Committee recommends that the State party take steps to ensure that its domestic legislation enables it to establish and exercise extraterritorial jurisdiction, including extraterritorial jurisdiction without the criterion of double criminality, over the crimes under the Optional Protocol, and where necessary, to use the Optional Protocol as a legal basis for extradition, in conformity with article 5 of the Optional Protocol.**

VII. Protection of the rights of child victims (arts. 8 and 9 (3) and (4) of the Optional Protocol)

Measures adopted to protect the rights of child victims

31. The Committee is concerned about the insufficient witness protection programme for child victims of offences under the Optional Protocol who come from abroad and are not always perceived as victims, and might be considered criminals. The Committee also notes with concern that children who have become victims of an offence under the Optional Protocol and are in an irregular migration situation, or whose residence status is unclear, cannot adequately benefit from the protective provisions of the Optional Protocol.

32. **The Committee recommends that the State party ensure that child victims of any of the offences under the Optional Protocol are not subject to criminal punishment and are considered victims. In the light of article 9, paragraph 3, of the Optional Protocol, the Committee also recommends that the State party take all the necessary legislative steps to ensure that every child who has become a victim of an offence under the Optional Protocol is given equal access to protective provisions and that the best interests of the child are always a primary consideration, in accordance with article 8, paragraph 3, of the Optional Protocol.**

Criminal justice system protection measures

33. While welcoming the legislative measures taken by the State party to ensure the protection of child victims and witnesses, the Committee notes with concern that child victims and witnesses frequently do not receive sufficient information about their procedural rights. While welcoming the introduction of the possibility of using audiovisual recordings of witness testimony, the Committee is also concerned at the limited use of that technology.

34. **In the light of article 8, paragraph 1, of the Optional Protocol, the Committee recommends that the State party ensure the protection of child victims and witnesses at all stages of the criminal justice process. The State party should be guided in that respect by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council in its resolution 2005/20. In so doing, the Committee recommends that the State party, inter alia, place special emphasis on sections VII and XI of the Guidelines, and make every effort to allocate adequate and sufficient human, technical and financial resources to ensure the effective and exhaustive implementation of the right to be informed and the right to be protected from hardship during the justice process.**

Recovery and reintegration of victims

35. The Committee is concerned about the insufficient measures for the recovery and reintegration of victims of all offences under the Optional Protocol, particularly for boys and unaccompanied children, including the low number of counselling centres for children affected by child pornography or forced labour. The Committee also notes with concern the lack of support for families of child victims of trafficking, child prostitution and child pornography and regrets the lack of information on the implementation of the Victims Compensation Act in cases involving offences under the Optional Protocol.

36. **The Committee recommends that the State party take all the necessary measures to ensure that, nationwide, child victims of offences under the Optional Protocol and their families are provided with appropriate assistance, including for physical and psychological recovery and full social reintegration. In that regard, the Committee also recommends that the State party ensure the provision of appropriate legal and psychological training for the persons responsible for assisting child victims, and the systematic evaluation of those services, with the participation of relevant actors, including child victims. The Committee further recommends that the State party ensure that all child victims, without discrimination, have access to adequate procedures to seek compensation from those legally responsible for the offences.**

Helpline

37. While welcoming the existence of the "Nummer gegen Kummer" (Number against worries) helpline for children and adolescents, the Committee regrets that it does not fully reach the target group of the Optional Protocol. The Committee also notes with concern that neither that helpline nor the one administered by the Independent Commissioner for Child Sex Abuse Issues provides a nationwide service, or a service that is available 24 hours a day, 7 days a week.

38. **The Committee encourages the State party to strengthen its financial support for children's helplines and consider allocating human, technical and financial resources to ensure that:**

(a) Professionals working for the helplines are trained to counsel child victims of the offences under the Optional Protocol;

(b) The helplines are accessible throughout the country 24 hours a day, 7 days a week;

(c) The possibility of contacting the helplines for matters related to the Optional Protocol is made widely known, particularly among children in vulnerable situations.

VIII. International assistance and cooperation (art. 10 of the Optional Protocol)

Multilateral, bilateral and regional agreements

39. **In the light of article 10, paragraph 1, of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, bilateral and regional arrangements, especially with neighbouring countries, including by strengthening procedures for and mechanisms to coordinate the implementation of such arrangements, with a view to improving the prevention of, and the detection, investigation, prosecution and punishment of those responsible for all of the offences under the Optional Protocol.**

IX. Follow-up and dissemination

Follow-up

40. **The Committee recommends that the State party take all the appropriate measures to ensure the full implementation of the present recommendations, inter alia, by transmitting them to the relevant ministries, Parliament and to the federal, Länder and local authorities, for appropriate consideration and further action.**

Dissemination of concluding observations

41. **The Committee recommends that the report and written replies submitted by the State party and the present concluding observations be made widely available, including through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol, and its implementation and monitoring.**

X. Next report

42. **In accordance with article 12, paragraph 2, of the Optional Protocol, the Committee requests that the State party include further information on the implementation of the Optional Protocol in its next periodic report under the Convention on the Rights of the Child, to be submitted in accordance with article 44 of the Convention.**